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No. 86-241

In The
Supreme Court of the United States
October Term, 1986

Ann P. Fields and Gerald Fields,
Individually; and
Life For God's Stray Animals, Inc.
Petitioners,

v.

Rockdale County, Georgia; et al.,
Respondents.

PETITIONERS' RESPONSE TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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ARGUMENT

The petition for certiorari raised the issue of whether the Eleventh Circuit erroneously directed abstention on a federal question involving a kennel ordinance which barred Petitioners' shelter from Rockdale County, Georgia.

Petitioners respectfully but strongly disagree with a paragraph in Respondents' statement of the case, which appears to raise new issues presumably based on facts occurring since the petition was filed.

Petitioners take issue with the following statement in Respondents' brief, p.2:

> "Here Respondents would point out a fundamental fact: there is a continuing question of state law over whether the Petitioners' attempt to move their shelter to Miller Bottom Road is in compliance with the Rockdale County Superior Court nuisance decree. . . . The Petitioners' challenge to the Rockdale County kennel

> ordinance was and is an attempt to evade the effects of this decree. The kennel ordinance is at this point wholly peripheral to that controversy and may never be invoked to bar the petitioners' attempt to move to the Miller Bottom Road location."

Respondents have tangled the facts so carefully separated by the District Court and accepted by the Eleventh Circuit.

The pertinent facts remain unchanged, which facts Respondents accepted in the first sentence of their fact statement:

> "None of the state court litigation applies to the new kennel ordinance. None of the state court litigation applies to the Fields' use of the Miller Bottom Road property. The state court has not been inhibited by the federal court action in enforcing its judgments [against the Farmer Road site]."
> Petitioners' brief, p.7.

Further, Petitioners' move to the Miller Bottom Road site is not an attempt

"to evade the effects of [the Rockdale County court's] decree," but rather, it shows "plaintiff's urgent efforts to establish their kennel in a new location" to **comply** with the nuisance and set-back decrees. District Court's order, App.20.

Respondents' suggestion of mootness in the paragraph quoted is also in conflict with the facts, because the kennel ordinance had already been invoked to bar Petitioners' move to Miller Bottom Road:

> "Because of the ordinance's presumptions and predetermination of nuisance per se if a kennel exceeds the 150/50 animal limitation, Rockdale County officials refused the Fields all necessary development permits to allow the Fields to move the animals to the new site at Miller Bottom Road. App.31-32. Thus, as late as the hearings on this case in February and March of 1985, the Fields were unable to get permits to construct a new shelter, move the animals, or abate the nuisance declared by the Rockdale Superior Court against the Farmer Road site. App. 31."
> Petitioners' brief, p.6.

Thus, there is no nuisance or zoning action in the state courts of Georgia affecting the Miller Bottom Road site or the kennel ordinance. The nuisance and setback requirements apply only to the Farmer Road site. Petitioners' purchase of property in 1984 on the Miller Bottom Road site was to comply with the court's nuisance and setback rulings by moving from Farmer Road. And the kennel ordinance issue is not moot. The ordinance is one of several obstacles put in Petitioners' way by the county officials themselves to impede Petitioners' efforts to abate the Farmer Road issues by moving the kennel to Miller Bottom Road to unwanted property next door to a dump.

The issues and suggested issues raised in the quoted paragraph of Respondents' statement of case do not exist, as the record shows. There is no state court bar to the federal court's

resolution of federal constitutional questions presented in Petitioners' challenge to the kennel ordinance.

Respectfully submitted,

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